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ger, or by directing the men moving the scaffold to stop until such employee could get out of the way, if such employee was negligent, as contended, in being at the place where he was, there was a plain case for the application of the doctrine of last clear chance.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 801-804; Dec. Dig. § 248.* 9 Va.-W. Va. Enc. Dig. 698; 14 Va.-W. Va. Enc. Dig. 692; 15 Va.-W. Va. Enc. Dig. 650.]

10. Trial (§ 252*)—Instructions—Applicability to Evidence.—An instruction was properly refused where there was no evidence upon which it could be based.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 505, 596-612; Dec. Dig. § 252.* 7 Va.-W. Va. Enc. Dig. 718; 14 Va.-W. Va. Enc. Dig. 563; 15 Va.-W. Va. Enc. Dig. 513.]

11. Trial (§ 252*)—Instructions—Evidence.—Where, in an action for the death of an employee knocked from a trestle on which he was working, there was evidence tending to show that the accident resulted from the attempt of a foreman to move a scaffolding with three men, when four was the least number that could move it with safety, an instruction that there could be no recovery on the ground of any alleged insufficiency in the number of men employed was properly refused.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 505, 596-612; Dec. Dig. § 252.* 7 Va.-W. Va. Enc. Dig. 714; 14 Va.-W. Va. Enc. Dig. 562; 15 Va.-W. Va. Enc. Dig. 512.]

Error to Hustings Court of Richmond.

Action by William W. Newton, administrator, against the Chesapeake & Ohio Railway Company. Judgment for plaintiff, and defendant brings error. Affirmed.

D. H. & Walter Leake and Henry Taylor, Jr., all of Richmond, for plaintiff in error.

L. O. Wendenburg, of Richmond, for defendant in error.

PROVIDENCE FORGE FISHING & HUNTING CLUB, Inc., et al. *v.* GILL.

June 10, 1915.

[85 S. E. 464.]

Vendor and Purchaser (§ 230*)—Bona Fide Purchaser—Notice—Constructive Notice.—Defendant's grantor, who had already contracted to sell complainant 10 acres off of a tract of land, executed a deed of trust on the land, except the 10-acre tract. The trust deed was duly recorded and the 10-acre parcel was conveyed to defendant. Held, that as defendant did not have actual notice of the contract.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the trust deed did not operate as constructive notice of complainant's rights; the instrument not being in defendant's chain of title.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. §§ 502-512; Dec. Dig. § 230.* 13 Va.-W. Va. Enc. Dig. 599; 14 Va.-W. Va. Enc. Dig. 1063; 15 Va.-W. Va. Enc. Dig. 1050.]

Appeal from Chancery Court of Richmond.

Bill by William I. Gill against the Providence Forge Fishing & Hunting Club, Incorporated, and another. From a decree for complainant, defendants appeal. Reversed.

Lamb & Lamb and *Chas. L. Page*, of Manchester, for appellants.

Christian, Gordon & Christian, of Richmond, and *L. M. Nance*, of Roxbury, for appellee.

BRADLEY et al. v. TOLSON.

June 10, 1915.

[85 S. E. 466.]

1. Vendor and Purchaser (§ 33*)—Fraud—Misrepresentations as to Quantity—Knowledge of Falsity.—Reckless misrepresentations by an agent for the sale of land as to the quantity of the land are fraudulent regardless of the agent's knowledge of their falsity when he made them.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. §§ 38, 40-43, 66; Dec. Dig. § 33.* 6 Va.-W. Va. Enc. Dig. 470; 14 Va.-W. Va. Enc. Dig. 469; 15 Va.-W. Va. Enc. Dig. 424.]

2. Vendor and Purchaser (§ 336*)—Fraud—Affirmance of Contract.—Where a purchaser of land, after learning that the agent had misrepresented the quantity of land, wrote to the owners that he left it entirely with them as to whether they would do anything about it, and on their refusal to make any concessions finished paying for the land according to the contract, he cannot thereafter recover compensation for deficiency in quantity, even though he did not know, when he wrote the letter, that the agent knew his representations were false, since the agent's knowledge of the falsity was immaterial, and the purchaser affirmed the contract after he knew all the material facts.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. § 984; Dec. Dig. § 336.* 6 Va.-W. Va. Enc. Dig. 482; 14 Va.-W. Va. Enc. Dig. 474; 15 Va.-W. Va. Enc. Dig. 426.]

3. Contracts (§ 97*)—Fraud—Affirmance.—One who has elected to affirm a contract after learning of the fraud cannot thereafter disaffirm it.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 442-446;

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.